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Supreme Court, U.S.
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No. 93-1950

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ROSE A. DONOVAN and CHARLES A. DONOVAN,
Parents of TRALANE DONOVAN,

Petitioners,

vs.

DONNA E. SHALALA,
Secretary of Health and Human Resources,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONERS' REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondent's arguments highlight why this Court should grant the petition. A little over two weeks after the petition for *writ of certiorari* was filed herein, the court of

appeals issued a published decision on *Patton v. Secretary of HHS*, No. 93-5187 (Fed. Cir. June 2, 1994), reprinted in the Appendix, Brief for the Respondent in Opposition. This decision affirms and expounds on the pertinent points of law on which petitioner relied upon in the lower courts and in this petition, as follows:

1. It has been petitioners' contention before the court of federal claims and the court of appeals that the federal court of claims has jurisdiction to relieve a party from a judgment under RCFC Rule 60(b) for the limited purposes listed in the Rule.

2. It has been petitioners' contention before the court of appeals that the failure to file a timely motion seeking review of a master's decision does not prohibit the court of federal claims from granting relief from a judgment where the relief sought does not involve consideration of the merits of the case and falls within the requirements of RCFC Rule 60.

3. Petitioners' herein have never challenged the findings or conclusions underlying the special master's decision to deny to award compensation for a vaccine related injury to Tralane Donovan or appealing the merits of the judgment.

4. Notwithstanding the above, the federal court of claims denied petitioners' motion for Rule 60(b) relief precisely because it found it lacked jurisdiction to even consider the motion relying on *Widdoss v. Secretary DHHS*, [989 F.2d 1170 (Fed.Cir. 1993)]. *Per curiam*, the Court of Appeals affirmed.

5. The crux of the petition before the court is whether *Widdoss* or *Patton* should apply. It is respectfully submitted that under the facts of this case, the courts below should have applied the rule later set forth in *Patton* and heard the petitioners' motion for Rule 60(b) relief on the merits.

6. Because the decision by the court of appeals in this matter was *per curiam*, respondent's assertion that the holding in *Patton* was applied by the court in this case is pure conjecture and speculation. In fact, the court of appeals erred in affirming the court of federal claim's refusal to grant post judgment relief in this Vaccine Act case by not applying the rule now affirmed and delineated in *Patton*.

Conclusion

For the foregoing reasons, the petition for a *writ of certiorari* should be granted.

Respectfully submitted,

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August 1994